

INFORMATION SHEET
 DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS
 RESULTING FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK COUNTY
 V. U.S. ARMY CORPS OF ENGINEERS

DISTRICT OFFICE: Philadelphia

FILE NUMBER: CENAP-OP-R-200400267-65

Date: June 30, 2004

PROJECT REVIEW/DETERMINATION COMPLETED: In the office Y (Y/N) Date: May 21, 2004
 At the project site Y (Y/N) Date: May 19, 2004

PROJECT LOCATION INFORMATION:

State: Pennsylvania

County: Monroe

Center coordinates of site by latitude & longitudinal coordinates: 41° 05' 05" N / 75° 35' 14" W

Approximate size of site/property (including uplands & in acres): ~ 25 acres

Name of waterway or watershed: Tobyhanna Creek

SITE CONDITIONS:

Type of aquatic resource ¹	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear feet	Unknown
Lake									
River									
Stream									
Dry Wash									
Mudflat									
Sandflat									
Wetlands	X								
Slough									
Prairie pothole									
Wet meadow									
Playa lake									
Vernal pool									
Natural pond									
Other water (identify type)									

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹ :	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able To Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?				X	
Is or would be used as habitat by other migratory birds that cross state lines?				X	
Is or would be used as habitat for endangered species?				X	
Is used to irrigate crops sold in interstate commerce?		X			

¹Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION: Preliminary _____ Or Approved X .

ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 – site conditions; paragraphs 2-3 – rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 – site information on waters of the U.S. occurring onsite):

INFORMATION SHEET – CONTINUED

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RESULTING FROM THE U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK
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ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 – site conditions; paragraph 2-3 – rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 – site information on waters of the U.S. occurring onsite):

1. The site is approximately 25 acres in size and adjacent to the Tobyhanna Creek. The entire parcel is forested and undisturbed. The site contains a jurisdictional wetland/stream complex adjacent to Tobyhanna Creek and a non-jurisdictional wetland located in the northwestern corner of the study area.
2. The non-jurisdictional wetland (wetland c) is located in the northwestern portion of the parcel. This wetland depression is a shallow emergent, scrub/shrub wetland surrounded by forested, well drained upland soils. This wetland is approximately 0.01 acre in size and is approximately 400 linear feet from the nearest regulated water of the U.S. This wetland has no apparent inlet or outlet and therefore has no surface water connection to a waters of the U.S. Topographic barriers, distance and physical landscape separate this wetland from regulated waters.
3. Due to the small size of this wetland depression it has been determined that it is not capable of supporting navigation. From 33 CFR 328.3 (a) the following commerce determinations have been made with regard to the non-jurisdictional wetland depression: a) It is not subject to, susceptible to, nor has it been in the past subject to use in interstate or foreign commerce; it is not subject to ebb and flow of the tide; b) It is not interstate, and is located entirely within the state of Pennsylvania; c) It is not an intrastate water that the use, degradation or destruction of which could effect interstate or foreign commerce; d) It can not be used by interstate or foreign travelers for recreation or other purposes as the property is private; e) It could not be used for the harvesting or selling of fish or shellfish in interstate or foreign commerce; f) It could not be used for industrial purposes by industries in interstate commerce; g) It is not an impoundment of waters described above; h) It is not a tributary to waters of the United States; and i) It is not a part of the territorial seas; j) It is not adjacent to a waters of the United States.
4. In reference to the jurisdictional waters which exist on the property, the following jurisdictional determination has been made. The wetlands and small unnamed tributaries which make up the wetland complex adjacent to Tobyhanna Creek. The Tobyhanna Creek is a tributary to the Lehigh River, which is tributary to the Delaware River. The Delaware River is used in interstate and foreign commerce, and is also subject to the ebb and flow of the tide, therefore, the Delaware River is considered a navigable water of the U.S. and is jurisdictional pursuant to 33 CFR 328.3 (a)(1). As such, the Tobyhanna Creek, Lehigh River and the wetland/stream complex (not wetland "c" above) are regulated waters pursuant to 33 CFR 328.3(a)(5), because they are tributary to a waters of the U.S. The wetlands (except for wetland "c" discussed above) meets 33 CFR 328.2(a)(7), because they are adjacent to waters of the U.S.